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Backgrounder

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Meeting of Internal Trade Ministers on Removing Interprovincial Barriers Deserves Canadians' Strong Backing

by

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On March 18, federal, provincial, and territorial internal trade ministers will meet to finalize a negotiating agenda for the removal of interprovincial trade barriers. Should they succeed in committing to such an agenda, Canada may be on the verge of a major economic breakthrough.

On the eve of their meeting, and given the importance of strengthening internal Canadian trade within a globalizing economy, the C.D. Howe Institute reiterates its view that the ministers must devise a framework that, while remaining true to the spirit of Canadian federalism, is comprehensive in scope, leads to enforceable commitments, and refrains from entrenching any exceptions that would close the door to further liberalization in the future. In that spirit, the Institute urges the federal, provincial, and territorial governments to commit to:

- putting in place, by June 30, 1995, legislation to remove interprovincial trade barriers;
- agreeing to a list of sectors within which barriers will be removed by that date; and
- devising an actual negotiating process to end trade barriers.

The Need for a Stronger Economic Union

Trade barriers among Canada's provinces remain a serious impediment to the development of a stronger Canadian economy, for several reasons:

- Barriers raise the costs of goods and services coming from within a province as well as from outside the province, both for consumers and for taxpayers through more expensive government purchases.
- By fostering unnecessary differences in the treatment of individuals or businesses according to their province of establishment, barriers prevent those who are efficient and innovative from expanding their activities across the country and stifle the emergence of internationally competitive Canadian businesses.
- At a time when many trade barriers between Canada and the rest of the world are coming down — whether through international agreements or to comply with Canada's multilateral obligations under the GATT — interprovincial barriers are not only economically inefficient, but also harmful to the country's political fabric

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in that they use geography to deny Canadians equal opportunity. Indeed, such barriers sometimes mean that Canadians are treated less favorably in their own country than foreigners.

Since the formation of the Committee of Ministers of Internal Trade (CMIT) in November 1987, attempts have been made to remove barriers on a piecemeal basis. This process has so far led to two serious but incomplete agreements on beer marketing and government procurement practices. The prime minister and premiers made less-than-wholehearted attempts to entrench the removal of trade barriers in the Constitution during the long debates of 1991–92, but they managed to come to a political agreement to review the principles of a stronger economic union at a future first ministers' conference.

Members of the CMIT subsequently met in December 1992, and agreed to recommend to their governments the launch of a comprehensive negotiation process to remove interprovincial trade barriers, with the objective of reaching a broad agreement by June 30, 1994, and removing the barriers by June 30, 1995. The upcoming meeting will be a decisive step in fulfilling that objective.

A Comprehensive Package

One of the most important tasks facing the CMIT is, in our view, to keep the list of issues on the table as all-encompassing as possible. The advantages of negotiating on a number of issues at once are substantial, in that it is likely that everybody will come away from the table with benefits that more than offset the adjustment costs. At the same time, the list of topics should be specific enough that individual Canadians and governments would know what is *not* on the table, and therefore would not worry about it. Once the trade ministers reach a consensus on the list of barriers to be removed in principle, they should also explicitly agree that there will be no opting out of any part of the package that will eventually be agreed on.

This being said, the negotiations should address several priority areas if they are to have a meaningful impact:

- goods, services, and construction procurement in the whole public sector, including the MUSH sector — municipalities, universities, schools, and hospitals;
- labor and professional standards;
- construction, transportation, and telecommunication standards;
- remaining impediments to trade in alcoholic beverages;
- provincial or federal policies — such as subsidies to attract established industries — that demonstrably distort the choices of location and production within the country to the detriment of one or more provinces or regions;
- delivery of financial services by out-of-province firms;
- discriminatory policies regarding food packaging, inspection, and certification; and
- compulsory in-province resource processing or sourcing.

Once the ministers have reached an agreement in principle on the barriers to be removed, they should delegate the drafting of individual technical measures to a team of federal and provincial experts, only some of whom would be direct representatives of the federal and provincial governments. The team of experts should also examine, case by case, the need for structural help for communities directly affected by the proposals.

Once this is done, ministers can vote on whether to accept or reject the package in its entirety, using a specific-majority, two-thirds-majority, or weighted-majority voting formula.

Negotiating Principles

In the Institute's view, any workable proposal must take into account several aspects of the nature of the Canadian federation:

- Neither control from the center nor forced similarity of standards will work in securing a stronger economic union.
- Since, in the past, the federal and provincial governments have created discriminatory obstacles to trade within the country, no level of government should be given the sole power to decide what is and is not compatible with an efficient economic union. Indeed, neither Ottawa nor the

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provinces should be allowed to impose or maintain barriers.

- The proposal is not meant to impose a "free market" agenda. The provinces have an understandable concern that entrenching a "free to move" agenda, such as the one that was proposed early in the last constitutional debate, could prevent the pursuit of legitimate provincial goals. Perfect mobility of goods, services, persons, and capital would, at the limit, entail the removal of all differences among provinces. Rather, the focus should be the prohibition of arbitrary discrimination on the basis of province of residence.
- For provincial governments, nondiscrimination would amount to a commitment to provide out-of-province individuals and businesses with "provincial treatment" — the same commercial or employment opportunities as are enjoyed by the vast majority of provincial residents. A law or practice that affects the commercial or employment conditions of provincial and out-of province residents equally — for example, the setting up of provincial monopolies, residence requirements for property ownership, or protection of historic artifacts — would not be considered an undue barrier to trade by this principle.
- Furthermore, a discriminatory measure should be banned only if it was found to be "arbitrary," which, in effect, establishes a test of reasonableness regarding the discriminatory content of any policy. If there are no other ways to obtain the desired objective than to discriminate against out-of-province residents, the discrimination would not be considered "arbitrary" and the policy would be allowed to stand.
- Mutual recognition of standards, rather than harmonization of policies, should be the main way for dealing with areas under provincial jurisdiction. This would permit Canada's internal markets to be as open as is consistent with continuing innovation at the local level and competition for ideas among governments.

An Enforceable Economic Union

The internal trade ministers should strive to come to an agreement on the removal of trade barriers that is enforceable, not just among themselves, but by individual Canadians in cases where they feel governments are discriminating against them. Thus, the agreement should not simply be an intergovernmental one, but should be implemented through federal and provincial legislation as necessary so that it can be enforced through the courts.

An internal trade tribunal, composed of trade and other experts from across Canada, could be established to hear initial complaints by individuals or businesses of government discrimination or noncompliance, although it would have to balance these complaints against the right of governments to set policy objectives. The tribunal could operate in the following way:

- To avoid frivolous actions, complainants would have to demonstrate not only that a barrier exists but that it also inflicts substantial harm to their legitimate economic activity.
- Governments would have to demonstrate that the policies about which complaints are laid are not "arbitrary" — that is, that they have legitimate objectives related to, for example, public security, safety, and health, or environmental and consumer protection that cannot be met in substantially less discriminatory ways.
- Decisions of the tribunal could be appealed through the court system.

These criteria would be in line with international practice in the adjudication of trade disputes.

Keeping the Door Open to Further Liberalization

The trade ministers should also be aware that any list of explicit exemptions could become an excuse for governments to stifle future progress toward the mutual recognition or even harmonization of provincial standards — on, for example, products and services, professions, and the environment — the lack of which is a major impediment to trade and the pursuit of employment across provinces. If such a list is really necessary, the agreement should include provisions for review or phaseout of the exemptions.

Conclusion

The upcoming meeting of the CMIT is an important opportunity to take a major step toward ensuring the future economic well-being of Canada. At the

very least, the meeting should reaffirm the commitment of Canadian governments to a comprehensive negotiating process, and should strive to define this process and the areas that will fall under it. The C.D. Howe Institute offers the recommendations in this *Backgrounder* as the basis of a sound agreement by which Canadians can judge the outcome of the process.

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